IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 2496-47

CAPITAL TRANSIT COMPANY, A CORPORATION, ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CIVIL ACTION No. 3052-48

CAPITAL TRANSIT COMPANY, A CORPORATION, ET AL., PLAINTIFFS,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

CONSOLIDATED CAUSES

STATEMENT AS TO JURISDICTION

Filed Feb. 3, 1949. Harry M. Hull, Clerk.

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants, United States and Inter-

state Commerce Commission, submit herewith their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment and decree of the district court entered in these causes on December 9, 1948. A petition for appeal was filed on February 3, 1949, and is presented to the district court herewith.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the decisions in these causes is conferred by the Judicial Code, as revised by the act approved June 25, 1948, effective September 1, 1948, Title 28 U.S. Code, Sections 1253 and 2101 (b), consolidating and continuing the substance of prior provisions of law relating to direct appeals from decisions of three-judge courts in suits to set aside orders of the Interstate Commerce Commission. The following decisions, appeals in which were taken pursuant to such prior provisions thus codified, sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in these cases. *United States* v. *Capital Transit Company*, 325 U. S. 357; *United States* v. *Detroit & Cleveland Navigation Company*, 326 U. S. 236; *United States* v. *Pennsylvania Railroad Company*, 326 U. S. 612; *United States* v. *Pierce Auto Freight Lines*, 327 U. S. 515.

STATUTES INVOLVED

Interpretations of several sections of part II of the Interstate Commerce Act, as amended (49 U. S. C. 301, *et seq.*), particularly Sections 203(a)(8) and (10), 203(b)(7a) and (8), 204(a)(4a), 206 (second proviso), 216(e), and 216(f) (49 U. S. C. 303) (a) (8) and (10), 303(b)

(7a) and (8), 304(a) (4a), 306, 316(e), 316(f), are involved in this appeal.

THE ISSUES AND THE RULINGS BELOW

A statutory three-judge district court for the District of Columbia, by its judgment and decree of December 9, 1948, set aside orders of the Interstate Commerce Commission [1] prescribing maximum joint fares and the divisions thereof for the transportation of passengers by Capital Transit

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[1] Three orders of the Commission were enjoined by the district court: (1) The order of June 22, 1945, put into effect the maximum rates prescribed by the Commission in its order of June 12, 1944 (in Docket No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia*, 256 I.C.C. 769, 258 I.C.C. 559) which was sustained in *United States* v. *Capital Transit Company*, 325 U.S. 357, after two decisions enjoining the Commission's action had been rendered by the district court in favor of Capital Transit, 55 F. Supp. 51, 56 F. Supp. 670. (2) The Order of May 9, 1947 (in Docket No. MC-C-891, *Cancellation of Joint Fares Between District of Columbia and Nearby Virginia*, 47 M.C.C. 205), rejected for filing with the Commission certain tariff notices and schedules which would have resulted in publication of fares violating the order of June 22, 1945. (3) The order of July 7, 1948 (in Docket No. 28991, 270 I.C.C. 651), authorized an increase in the rates previously prescribed in the order of June 22, 1945, and prescribed the divisions of the rates to be received by the participating carriers.

Civil Action No. 2496-47 was filed on June 17, 1947, attacking the orders of May 9, 1947, and June 22, 1945, but was not brought on for trial by plaintiff until after No. 3052-48 was filed on July 26, 1948, attacking the orders of July 7, 1948, and June 22, 1945. The two suits were consolidated for trial.

Another action (No. 2976-48) in a one-judge court against the Attorney General, the United States Attorney for the District of Columbia, the members of the Commission individually, and others, was filed July 22, 1948, but dismissed by plaintiff on September 30, 1948, after a preliminary injunction to restrain the Commission's order had been denied. A further suit (No. 4454-48) was filed on October 28, 1948, attacking an order of September 17, 1948, which rejected for filing an additional tariff notice and schedules, and is still pending in the court below.

and connecting Virginia lines between the District of Columbia and certain nearby points in Virginia where important installations of the armed services are located (including the Pentagon Building and the Navy's Arlington Annex).

The district court ruled that such transportation did not constitute interstate commerce subject to the regulatory jurisdiction of the Interstate Commerce Commission, but was a matter for local regulation within the District of Columbia.

The district court granted an interlocutory injunction on August 4, 1948, restraining the enforcement of the Commission's orders, and permitting the carriers to collect the higher local fares rather than the joint line fares prescribed by the Interstate Commerce Commission, but requiring coupons to be issued, redeemable 3 cents for each ride in the event that the order of the Interstate Commerce Commission was ultimately sustained. It having been called to the attention of the court that in October, 1948, the local fares in the District of Columbia had been increased from 10 cents to 13 cents, cash (and the price of the weekly pass increased from $1.50 to $1.75), the court on October 26, 1948, amended the interlocutory injunction by increasing the value of the coupons issued to passengers from 3 cents to 6 cents, to correspond with the increase in the local fares permitted by order of the public Utilities Commission of the District.

After final hearing and oral argument on November 16, 1948, the court on the following day, in a very brief opinion, held "that the Interstate Commerce Commission is without jurisdiction to make the orders here in question"[2] and directed that a

permanent injunction issue. To protect the interests of the passengers, defendants-appellants petitioned for a stay pending appeal, and such a stay was granted.[3]

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The district court's judgment is not only erroneous as a matter of law, but is in direct conflict with the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357.

Moreover, the district court's judgment would be productive of consequences highly detrimental to important public interests relating to national defense.

The passengers affected by the rates which the Commission fixed at a reasonable level in the orders enjoined by the district court are employees of the government who live in the District of Columbia and work in the Pentagon Building, the Navy's Arlington Annex, and other national defense installations in nearby Virginia.

We submit that the thousands of passengers travelling between their homes in the District of

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[2] The court's opinion of November 17, 1948, reads in full as follows:

> The Court is of the opinion that the Interstate Commerce Commission is without jurisdiction to make the orders here in question, and that the regulatory power in respect to the matter in controversy lies with the Public Utilities Commission for the District of Columbia, *United States* v. *Yellow Cab Co.*, 332 U.S. 218; United States Code, Title 49, Section 316(e) (proviso).
>
> Judgment for the plaintiff granting permanent injunction against enforcement of the orders of the Interstate Commerce Commission. Counsel will submit proposed findings of fact and conclusions of law, and a proposed form of judgment.

[3] On December 9, 1948, the court entered its findings of fact, conclusions of law, final decree, and stay order pending appeal.

Columbia and places of employment in nearby Virginia are in interstate commerce, and that the Interstate Commerce Commission is the only tribunal with authority to pass upon the reasonableness of the fares now exacted from these passengers, which at present amount to 46 cents a day per passenger for such service. Even before the recent increase in the local fares in the District of Columbia, there was testimony in the record that because of the high fares exacted for this short trip to and from Virginia it was difficult to recruit employees in services so vital to the national defense.

The district court's decision that the Commission had no jurisdiction to make the orders here involved is manifestly erroneous. That the Commission does have such jurisdiction was squarely decided in *United States* v. *Capital Transit Company*, 325 U. S. 357. While because of fluctuating economic conditions a rate order fixing a level of rates is never to be regarded as *res judicata*, it seems clear that insofar as the question of the Commission's jurisdiction and authority to make a rate order with respect to the particular traffic involved here is concerned, the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357, is *res judicata*. In any event, it is a conclusive precedent squarely in point in the case at bar.

The attempted distinctions between the two cases which Capital Transit urges, and which apparently misled the district court, are obviously unsound.

1. Capital Transit contends that the Commission's jurisdiction was predicated upon national defense needs, and that the end of the war has ousted it of jurisdiction. But it is obvious that the Commission's authority is in no manner affected or impaired by the termination of hostilities, even

though the functioning of national defense installations appears less dramatic than during the existence of a state of war. The Commission's order sustained in *United States* v. *Capital Transit Company*, 325 U. S. 357, was not based upon war powers legislation to any extent whatever, but was based upon provisions of the Interstate Commerce Act which are applicable in time of peace as well as in time of war.

The fact that the shooting phase of the war is over is immaterial. The declaration of policy, under which the Commission is to administer all provisions of the Interstate Commerce Act, imposes on the Commission the duty of so exercising its functions that such regulation will, at all times, be "adequate to meet the needs of the commerce of the United States, of the postal service and of the national defense." As pointed out by the Commission in its report of July 7, 1948, "the national transportation policy contemplates a national transportation system that will, among other things, meet the needs of the national defense and it applies in peacetime as well as in war time." 270 I.C.C. 651, 657.

2. Capital Transit contends that the Commission's jurisdiction in 1945 depended upon the circumstance that at that date Capital Transit was operating its own busses, under temporary authority from the Commission, between the District of Columbia and the Pentagon Building. However it did not at any time serve the other installations in Virginia to which joint fares were then prescribed, namely the Navy Arlington Annex, the Air Force Annex, and the Washington National Airport, which Virginia points were served by certain

Virginia motor lines. Capital Transit's temporary authority to serve the Pentagon expired on March 31, 1947.[4]

Such cessation of bus operations into Virginia by Capital Transit is a circumstance of no significance insofar as the effect of the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357, with respect to the Commission's jurisdiction, is concerned. The Commission's order was there sustained, not only as to the service to the Pentagon by Capital Transit with its own busses, but also as to joint service via Capital Transit and the Virginia lines to the other Virginia installations not served directly by Capital Transit with its own busses. With respect to such joint service, as to which the Commission's authority was sustained, the situation in 1945 was identical with that in the case at bar.

In 1945, just as now, it was necessary for the many employees of the Government and in the Armed Forces travelling from their homes in the District of Columbia to nearby Virginia points other than the Pentagon Building to use the joint facilities of Capital Transit and connecting Virginia motor lines. With respect to such joint service the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357, that the Commission has jurisdiction to prescribe maximum reasonable rates for such transportation is squarely in point. Its controlling authority is in no wise im-

[4] The Commission in finding that Capital Transit had discontinued its motor operations in Virginia, however noted that "it continues to conduct motor operations in the District of Columbia and Maryland." 47 M.C.C. 205, 206-207. It is of course apparent that passengers travelling between Maryland points served by Capital Transit and the Virginia installations would be required to use the same joint service arrangement.

paired by the irrelevant circumstance that Capital Transit no longer operates its own busses into Virginia.

3. Capital Transit relies upon *United States* v. *Yellow Cab Company*, 332 U. S. 218, as establishing that it is not engaged in interstate commerce when it transports within the District of Columbia passengers bound to or from the Pentagon and other points in nearby Virginia. But the identical contention thus raised was ruled upon and rejected in *United States* v. *Capital Transit Company*, 325 U. S. 357. The Court squarely determined (p. 363) that the nature and volume of the passenger travel between the District of Columbia and the points in nearby Virginia was such as to make the entire trip between the passenger's home and place of employment an interstate journey. The *Yellow Cab* case held that taxicab service between Chicago railroad stations and homes or offices involved too "casual and incidental" a relationship to interstate commerce to fall within the applicability of the Sherman Antitrust Act. That decision has no application to the circumstances of the case at bar, where there is a daily and regular flow of large numbers of employees utilizing mass transportation facilities in a continuous journey between the District of Columbia and the Virginia military establishments. The inappositeness of the *Yellow Cab* case is clearly shown by the fact that taxicab service is expressly excluded from the purview of the Interstate Commerce Act by Section 203(b)(2) (49 U.S.C. 303(b)(2)).

It is thus evident that important issues involving the interpretation and application of the Interstate Commerce Act have been erroneously decided by the district court and are raised on this appeal. It

is accordingly submitted that substantial questions are involved which call for the appropriate exercise of appellate jurisdiction.

Copies of the district court's opinion of November 17, 1948, its findings of fact, conclusions of law, final judgment and stay pending appeal, all dated December 9, 1948, are appended hereto.

Dated February 3, 1949.

Respectfully submitted,

(S.) PHILIP B. PERLMAN,
Solicitor General.

(S.) DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

Copy

Filed Nov. 17, 1948. Harry M. Hull, Clerk.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action Nos. 2496-47, 3052-48

CAPITAL TRANSIT COMPANY, PLAINTIFF

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

OPINION

Filed Feb. 3, 1949. Harry M. Hull, Clerk.

The Court is of the opinion that the Interstate Commerce Commission is without jurisdiction to make the orders here in question, and that the regulatory power in respect to the matter in controversy lies with the Public Utilities Commission for the District of Columbia, *United States* v. *Yellow Cab Co.*, 332 U. S. 218; United States Code, Title 49, Section 316(e) (proviso).

Judgment for the plaintiff granting permanent injunction against enforcement of the orders of the Interstate Commerce Commission. Counsel will submit proposed findings of fact and conclusions of law, and a proposed form of judgment.

(S.) WILBUR K. MILLER,
United States Circuit Judge.
(S.) ALEXANDER HOLTZOFF,
United States District Judge.
(S.) EDWARD A. TAMM,
United States District Judge.

November 17, 1948.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Actions No. 2496-47, No. 3052-48

CAPITAL TRANSIT COMPANY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, ET AL., DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These causes came on to be heard before a Court of three judges duly constituted in accordance with the provisions of the Urgent Deficiencies Appropriation Act, approved October 22, 1913 (28 U. S. Code, Sections 2284, 2325); and upon consideration of the pleadings, evidence and argument of counsel with respect to certain questions of jurisdiction of the regulatory bodies concerned; the Court makes the following:

Findings of Fact

1. Capital Transit Company, the plaintiff, is a corporation duly organized and existing under the laws applicable in the District of Columbia, and, under franchises granted by the United States of America, is engaged in the transportation of passengers for hire from one point to another within the District of Columbia by street railway and motor bus. The major part of the transportation operations and business of Capital Transit Company within the District of Columbia is carried on by means of its street railway facilities.

2. The intervening defendant Virginia Companies, that is Alexandria, Barcroft and Washington Transit Company and Washington, Virginia and Maryland Coach Company, Inc., are engaged in the transportation of passengers for hire by bus between points in Virginia and between designated points in the downtown business section of the Dis-

trict of Columbia and points in Virginia, including certain Federal Government buildings in Arlington County, Virginia.

3. The proceedings before the defendant Interstate Commerce Commission (sometimes referred to herein as the "Commission"), in its Docket No. 28991, were begun in 1943 on complaint of the Secretary of War; and resulted in an order by that Commission dated June 22, 1945. The Commission's order of June 22, 1945, required Capital Transit Company and the Virginia Companies, among other things, according as they participated in transportation of passengers between all points in the District of Columbia and certain points in Arlington County, Virginia, to establish and thereafter maintain and apply fares which were not to exceed $1.60 for 12 one-way trips, equal to 13⅓ cents per one-way trip, including transfer privileges between the street railway and motor bus lines of Capital Transit Company within the District of Columbia.

4. Under the compulsion of the Commission's order of June 22, 1945, the Virginia Companies elected to file tariffs with the Commission containing joint fares with Capital Transit Company for the joint service required by the Commission at the 13⅓ cent rate. In lieu of filing its own tariff with the Commission, Capital Transit Company filed concurrences to the tariffs filed by the Virginia Companies. The concurrences filed by Capital Transit Company were expressly limited to concurrence in the maximum 13⅓ cent rate of fare prescribed by the Commission's Order of June 22, 1945; and such concurrences also expressly reserved the right of revocation on appropriate notice.

5. Shortly after the filing of the tariffs and concurrences by the carriers in 1945 they agreed upon the divisions of the 13⅓ cent rate at 5.833 cents for Capital Transit Company and the balance to each of the Virginia Companies, respectively, subject to the express agreement that the compensation

agreed upon for Capital Transit Company was subject to the approval of the Public Utilities Commission of the District of Columbia (sometimes referred to herein as the "District Commission".) Approval of the compensation for Capital Transit Company under such agreements was never obtained from the District Commission, but on the contrary, such compensation was expressly disapproved and prohibited by the District Commission's Order No. 3209.

6. By appropriate notices dated February 26, 1947 and March 6, 1947, Capital Transit Company cancelled and revoked its concurrences in the joint tariffs of the Virginia Companies filed with the Commission in 1945. The notice of revocation of March 6, 1947 was effective as of May 12, 1947.

7. On April 1, 1947, Capital Transit Company discontinued all of its motor bus operations across the State line between points in the District of Columbia and points in Arlington County, Virginia, that it had theretofore engaged in prior to and at the time of the Commission's Order of June 22, 1945, under temporary authority from the Commission which had expired on March 31, 1947.

8. (Stricken out by Court.)

9. On May 7, 1947, Capital Transit Company petitioned both the Interstate Commerce Commission and the Public Utilities Commission of the District of Columbia for declaratory orders on the question of the respective jurisdictions of such Commissions over the rates, fares and compensation for the remaining transportation service of Capital Transit Company from one point to another within the District of Columbia after cessation of its operations across the State line into Virginia.

10. On May 9, 1947, the Interstate Commerce Commission refused to decide such issue, denied such declaratory relief, and issued its Order of May 9, 1947, in its Docket No. MC-C-891, rejecting

the Capital Transit Company revocation notice of March 6, 1947.

11. By its Opinion and Order No. 3209, dated June 11, 1947, the Public Utilities Commission of the District of Columbia found that the compensation received by Capital Transit Company, under the agreements between the carriers dividing the joint fare established under the Interstate Commerce Commission's Order of June 22, 1945, was in violation of the Act of Congress creating the District Commission and prohibiting discrimination and the collection of any such compensation for service within the District less than the fares prescribed by the District Commission. The District Commission thereupon ordered and determined, effective as of June 22, 1947, (a) that the transportation of passengers by Capital Transit Company from one point to another within the District of Columbia is subject to the jurisdiction of the District Commission, irrespective of whether or not such passengers may have origins or destinations from or to points without the District of Columbia via the lines of other common carriers of passengers; and (b) that the fares or compensation to be charged, demanded, collected, or received by Capital Transit Company for service rendered or to be rendered by it from one point to another within the District of Columbia to passengers travelling between points in the District of Columbia and points in Arlington County, Virginia, shall be no greater nor less than 10 cents cash or a weekly pass to be sold at $1.50, as authorized by the District Commission.

12. On June 17, 1947, Capital Transit Company notified the Virginia Companies of the District Commission's Order No. 3209 and demanded of them 10 cents cash for each joint fare ticket used on its lines within the District, as of June 22, 1947, as its compensation under the joint fares collected by the Virginia Companies. The Virginia Companies refused to pay the 10 cents compensation so

demanded of them. They made no application for reconsideration of Order No. 3209 before the District Commission; but petitioned the Interstate Commerce Commission to vacate and set aside its order of June 22, 1945, in its Docket No. 28991. The Commission denied such petitions on October 6, 1947, but reopened its Docket No. 28991 for further hearings.

13. By its Report and Order dated July 7, 1948, the Commission modified its Order of June 22, 1945, so as to require the maintenance of the joint fare but permitted an increase in such joint fare to a maximum of $1.92 for 12 one-way trips, equal to 16 cents per one-way trip, including transfer privileges on the streetcar and bus lines of Capital Transit Company within the District of Columbia. The Order of July 7, 1948, also for the first time fixed the division of the 13⅓ cent joint fare for Capital Transit Company at 5.83 cents retroactively to June 22, 1947; and fixed the division of the maximum 16 cent joint fare for Capital Transit Company at 7 cents.

14. By virtue of the permission to increase the joint fare to 16 cents granted by the Commission's Order of July 7, 1948, the Virginia Companies filed supplements to their joint tariffs with the Commission cancelling the 13⅓ cent fare and establishing the maximum 16 cent fare, effective August 2, 1948. Before the effective date thereof Capital Transit Company notified the Virginia Companies and the Commission that it did not concur in the supplements to the joint tariffs filed by the Virginia Companies.

15. On July 20, 1948, the Chairman of the District Commission notified Capital Transit Company that in view of the Interstate Commerce Commission's Order of July 7, 1948, Capital Transit Company must cease and desist from honoring any joint fare tickets applicable to the lines of the Company in order to comply with the District Commis-

sion's Order No. 3209 and other outstanding rate orders of the District Commission.

16. By Opinion and Order No. 3422, dated October 1, 1948, the District Commission found that the Interstate Commerce Commission's Order of July 7, 1948 would result in discrimination against other passengers using the facilities of Capital Transit Company within the District who do not use the joint rate to the designated points in Arlington County, Virginia; and would constitute a preference to those passengers using such facilities in travelling to and from the designated points in Arlington County. In such order the District Commission authorized cash fares for transportation from one point to another within the District at 13 cents per ride, with three tokens for 35 cents and a weekly pass for $1.75.

17. On April 1, 1947 Capital Transit Company discontinued all of its motor bus operations across the State line between points in the District of Columbia and points in Arlington County, Virginia; and since that date all transportation by Capital Transit Company, of persons travelling between points in the District of Columbia and points in Arlington County, Virginia, has been conducted wholly from one point to another within the District; and the Company no longer renders service across the Virginia State line to such persons.

Such transportation service by Capital Transit Company to such persons to and from the downtown terminal points of the Company's bus and streetcar lines within the District is no different from and is indistinguishable from and intermingled with the other local transportation services furnished by the Company to all other persons within the District. Capital Transit Company is engaged in the intrastate transportation or intra District transportation of passengers over the entire length of all of its routes within the District used by persons travelling to or from Virginia points via the lines of the Virginia Com-

panies, under rules and regulations and at rates prescribed by the District Commission; such Capital Transit Company lines are not limited to such persons travelling to and from Virginia points; and the transportation service rendered to such persons by Capital Transit Company is casual and incidental to its other local operations within the District.

18. Capital Transit Company has no physical connections, coordination, arrangements for through transportation service or interchange of passengers, or common terminal points with either of the Virginia Companies. At no time has it voluntarily engaged in the joint transportation of passengers with either of the Virginia Companies. The passengers on the Virginia lines are free to come and go from the terminals of such lines within the District of Columbia by means other than the transportation service of Capital Transit Company which may be rendered in the vicinity of such terminals. There is no relation in time or continuity between the transportation service on the lines of Capital Transit Company within the District and the transportation service on the lines of the Virginia Companies terminating in the District.

CONCLUSIONS OF LAW

1. This Court has jurisdiction in these proceedings under Title 28, United States Code, Sections 1336, 1398, 2284 and 2321-2325, inclusive, and pursuant to Section 10 of the Administrative Procedure Act (5 U. S. C. Section 1009).

2. The entire transportation conducted by Capital Transit Company, involved in the order of the Interstate Commerce Commission dated May 9, 1947, in its Docket No. MC-C-891, and the orders of such Commission dated June 22, 1945 and July 7, 1948, in its Docket No. 28991, is now, and has been since April 1, 1947, intrastate transportation within the meaning of the proviso to Section 216(e) of the Interstate Commerce Act (49 U. S. C. Sec. 316(e)).

3. The Interstate Commerce Commission has no jurisdiction or statutory authority to prescribe, or in any manner regulate, the rates, fares or charges of Capital Transit Company for such intrastate transportation within the District of Columbia, or for any service connected therewith, for any purpose whatever.

4. Such intrastate transportation by Capital Transit Company is too unrelated to interstate commerce to constitute a part thereof.

5. Such intrastate transportation by Capital Transit Company, and the rates, fares, charges, and compensation therefor, are within the jurisdiction and regulatory power of the Public Utilities Commission of the District of Columbia under an Act of Congress of March 4, 1913, as amended (37 Stat. 974; Title 43, Sections 101-1007, D. C. Code, 1940), and under the Merger Act of January 14, 1933 (Public Resolution No. 47, 72nd Congress; 47 Stat. 752, ch. 10).

6. Such transportation by Capital Transit Company, involved in the aforesaid orders of the Interstate Commerce Commission, constitutes the transportation of passengers from one point to another within the District of Columbia within the meaning of Title 43, Section 122, D. C. Code, 1940.

7. The regulatory jurisdiction of the Public Utilities Commission of the District of Columbia over such transportation by Capital Transit Company is further defined and granted by Title 43, Section 111, D. C. Code, 1940.

8. The regulatory jurisdiction of the Public Utilities Commission of the District of Columbia over the transfer arrangements and streetcar service involved in such transportation within the District by Capital Transit Company was transferred from the Interstate Commerce Commission to the Public Utilities Commission of the District of Columbia by virtue of the provisions of Title 43, Section 207, D. C. Code, 1940.

9. The regulatory jurisdiction of the Public Utilities Commission of the District of Columbia over transfer privileges between the lines of Capital Transit Company within the District, involved in the aforesaid orders of the Interstate Commerce Commission, was further granted by paragraph Thirteen of the Merger Agreement, approved in the said Merger Act of January 14, 1933.

10. Order No. 3209, issued by the Public Utilities Commission of the District of Columbia was within its jurisdiction and statutory authority under the said Act of March 4, 1913, as amended, and said Merger Act of January 14, 1933.

11. The Interstate Commerce Commission had no jurisdiction or statutory authority to issue its aforesaid orders of May 9, 1947 and July 7, 1948, insofar as they relate to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor; and the subject matter of its Order of June 22, 1945, insofar as it related to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor, is now beyond its jurisdiction and statutory authority.

(S.) WILBUR K. MILLER,
United States Circuit Judge;
(S.) ALEXANDER HOLTZOFF,
United States District Judge;
(S.) EDWARD A. TAMM,
United States District Judge.

Dated this 9th day of December, 1948.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Actions No. 2496-47, No. 3052-48

CAPITAL TRANSIT COMPANY, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, AND THE INTERSTATE COMMERCE COMMISSION, ET AL., DEFENDANTS

Filed Feb. 3, 1949. Harry M. Hull, Clerk.

ORDER AND JUDGMENT

These causes having been duly and properly submitted to this legally convened statutory three-judge court; and after hearing the parties with respect to certain questions of jurisdiction of the regulatory bodies concerned; and the Court being fully advised in the premises, and having filed and entered of record its Opinion and Findings of Fact and Conclusions of law, separately stated; and it appearing from the said Findings of Fact and Conclusions of Law that the Interstate Commerce Commission was without jurisdiction and statutory authority to make its Order of May 9, 1947, in its Docket No. MC-C-891, and its Order of July 7, 1948, in its Docket No. 28991, insofar as they relate to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor; and that the subject matter of its Order of June 22, 1945, in its Docket No. 28991, insofar as it related to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor, is now beyond the jurisdiction and statutory authority of the Interstate Commerce Commission; and it further appearing that such transportation by Capital Transit Company, and the rates, fares, charges, or compensation therefor, is within the regulatory jurisdiction and statutory authority of the Public Utilities Commission of the District of Columbia;

IT IS ORDERED, ADJUDGED, AND DECREED, this 8th day of December, 1948, that the said Orders of the Interstate Commerce Commission, dated June 22, 1945, May 9, 1947, and July 7, 1948, and each of them, insofar as they relate to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor, be and they hereby are set aside, annulled, and permanently suspended; the enforcement, execution, and operation of the said orders, insofar as they relate to transportation by Capital Transit Company and the rates, fares, charges, or compensation therefor, be and they hereby are permanently enjoined; and the United States of America and the Interstate Commerce Commission, their officers and agents, and others acting for them, be and they hereby are perpetually restrained and enjoined from taking any steps or instituting or prosecuting any proceeding to enforce said orders against Capital Transit Company.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Capital Transit Company and United States Guarantee Company be and they hereby are released and discharged from all liability or other obligation under the undertaking for Fifty Thousand Dollars ($50,000), filed with and approved by this Court on October 27, 1948, in Civil Action No. 3052-48; and that Capital Transit Company be and it hereby is released and discharged from all liability and obligations under the interlocutory order of this Court dated August 4, 1948, as amended by Order dated October 26, 1948, in such action.

(S.) WILBUR K. MILLER,
United States Circuit Judge.
(S.) ALEXANDER HOLTZOFF,
United States District Judge.
(S.) EDWARD A. TAMM,
United States District Judge.

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